IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.16511 of 1998

S. Kannan ... Petitioner

Vs.

1. Metro Transport Corporation,
rep.by its Managing Director,Div.I,
Chennai - 2.

2. Joint Managing Director,
Metro Transport Corporation, Div-I,
Chennai - 2. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records relating to the order Memo No.8762/Pa.Pi(Po)1/Ma.Po.Ka/97 dt.6.7.98 of the second respondent retiring the petitioner from service on 31.10.98 and quash the same and direct the respondents to continue the petitioner in service upto 31.10.2005 and award costs.

For Petitioner : Mr.D.Hariparanthaman

For Respondents: Mr.V.R.Kamalanathan

O R D E R

Prayer in this writ petition is to quash the order in Memo No.8762/Pa.Pi(Po)1/Ma.Po.Ka/97 dt.6.7.98 of the second respondent retiring the petitioner from service with effect from 31.10.98 and direct the respondents to continue the petitioner in service upto 31.10.2005.

2. The brief facts necessary for disposal of the writ petition as stated in the pleadings are as follows.

(a) Petitioner was born on 29.10.1947 and he belongs to backward class community. He studied upto SSLC (11th Standard – Old pattern) and his SSLC certificate mentions his date of birth as

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29.10.1947. Petitioner registered his name in the Employment Exchange, Cuddalore, and his name was sponsored in the year 1975 for selection to the post of conductor. According to the petitioner, candidates belonging to BC community were eligible for appointment for the post of conductor, if they were below 33 years of age and for SC, ST candidates the age restriction was 35 years and in case of open competition, the maximum age prescribed was 30 years of age.

(b) Petitioner being a backward class candidate and his age was below 33 years in the year 1975, his name was sponsored by the Employment Exchange and he was selected and appointed as Conductor by order dated 8.5.1975. According to the petitioner, at the time of joining in the post, he furnished his SSLC book and the date of birth in the bio-data stating that his date of birth was 29.10.1947.

(c) It is further stated in the affidavit that service register was opened and the petitioner was not given a chance to verify the date of birth entry made in the service register. In the year 1984, the pay bill section, shown the petitioner's date of birth as 29.10.1949. The said recording of Date of Birth is a mistate committed by the respondent.

(d) Petitioner, while serving in Adyar Depot, received a communication dated 27.10.1997 from the Head Office that the petitioner will be retiring on 31.10.1998 as he is allegedly completing 58 years of age and at that time, petitioner submitted a representation to correct the petitioner's date of birth as 29.10.1947 as per the entry in his SSLC book and transfer certificate. The Assistant Manager (Personnel) by communication dated 23.3.1998 requested the petitioner to produce the original SSLC certificate and transfer certificate issued by the School. Petitioner produced the same. However, he failed to pass any order and requested the petitioner to make representation to the Managing Director, pursuant to which, petitioner submitted a representation on 15.4.1998 to the Managing Director and requested him to treat his date of birth as 29.10.1947 and not as 29.10.1940.

(e) The second respondent passed imugned order dated 6.7.1998 stating that petitioner's date of birth as per their record is 29.10.1940 and he has to retire on 31.10.1998. Petitioner preferred an appeal before the Managing Director on 4.8.1998 and no order is passed in the appeal. Hence the petitioner filed the above writ petition and challenged the order of second respondent with a further direction to the respondents to continue the petitioner in service upto 31.10.2005.

3. Respondents filed counter affidavit and stated that at the time of appointment i.e., on 8.5.1975, petitioner's date of birth was entered in the service register as 29.10.1940 based on the entry made in the SSLC Book issued by the Head Master, Government High School, Puranasingapalayam, Pondicherry. Petitioner also signed in the service register after perusing the entry about his date of birth as 29.10.1940. Petitioner has not

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taken any steps to correct the date of birth in the service book in accordance with rule 31 of the standing orders, according to which, the date of birth entry made by the appointing authority at the time of initial appointment shall be final after the period of five years. Petitioner having submitted application to change his date of birth after a period of 23 years, the said request is not maintainable as per the service rules. Petitioner is to retire on 31.10.1998 according to the entry made in the service register and he has filed the writ petition just ten days prior to his retirement and the claim having been made belatedly, his claim was rejected by the impugned order.

4. The learned counsel for the petitioner submitted that even though the impugned order was passed directing the petitioner to retire on 31.10.1998, pursuant to the injunction granted by this Court, petitioner served as conductor till 31.10.2005 and he was paid salary beyond the period of his original date of retirement, that is from 1.11.1998 to 31.10.2005 and if the writ petition is allowed at this stage, petitioner will be in a position to get his terminal benefits treating his date of retirement as 31.10.2005. The learned counsel also produced the SSLC book and transfer certificate of the petitioner for perusal.

5. The learned counsel for the respondents produced the original service register as well as service rules and also cited judgments to support his contention that belated claims made by the employees to correct the date of birth at the fag end of their service shall not be entertained.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as respondents and perused the relevant documents.

7. It is true that there is discrepancy with regard to the date of birth entry in the SSLC and transfer certificate of the petitioner, service register of the petitioner and the pay slip issued by the respondents. The service register shows that the petitioner's date of birth as 29.10.1940. The SSLC and transfer certificates issued by the school authorities show that the petitioner's date of birth is 29.10.1947. The pay slip issued by the respondents shows that the petitioner's date of birth as entered is 29.10.1949. However, the service rules viz., certified standing orders of the respondent transport Corporation Rule 32(iv) states as follows,

> "The age of workman as recorded with a corporation at the time of his employment shall not, normally thereafter be sought to be altered by the workman. However, if a workman produces proof to the satisfaction of the Corporation within 5 years of joining services that the age given at the time of joining services that the age given at the time of appointment is wrong, the Corporation may alter the age of the workman. Any application made

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> for alteration of age after five years from the date of entering into service in the corporation will be summarily rejected."

The said standing order is issued with effect from 1.1.1972. The petitioner having been appointed on 7.8.1975, the said standing order is applicable to the petitioner.

8. As rightly contended by the learned counsel for the respondents, the service register of the petitioner was opened in the year 1975 and the petitioner also signed in the service register. Therefore, the presumption is, petitioner is aware of the date of birth entry in the service register as '29.10.1940'. As per the standing order extracted above, application for correction of date of birth entry in the service register can be made only within five years and any application made for alteration of age after five years from the date of entering into service will be summarily rejected. Petitioner is bound by the said rule and he having not submitted application within the prescribed five year period, is not entitled to seek alteration of his date of birth entered in the service register after 23 years.

9. A Division Bench of this Court considered a similar issue in the decision reported in 2004 (1) LW 279 (Commissioner and Director of Survey and Settlement and two others v. C.V.Varadharajan & another) in respect of rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, wherein also five year period is prescribed to entertain the application for correction of date of birth by Government Servants. Taking note of the said rule, the Division Bench in para 10 of its judgment held thus,

> "10. Hence the legal position is to the following effect:-
>
> (a) Any application for altering the date of birth shall be entertained only if filed within five years of entry into service and if such application is supported by document/documents referred in Rule 49(c).
>
> (b) Any application filed within five years and not supported by document/documents referred in Rule 49(c) so also any application filed after five years after entry into service shall be summarily rejected."

10. The Honourable Supreme Court in the decision reported in (2004) 3 SCC 394 (State of Punjab and others v. S.C.Chadha) considered the belated aplications submitted for correction of date of birth and held that the object of framing statutory rules or administrative instructions to prescribe the time limit for submitting the claim regarding correction of date of birth is to avoid entertaining applications after decades, especially on the eve of superannuation of such public servant. Paragraphs 8 and 9 of the judgment reads as follows,

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"8. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

9. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam* v. *Daksha Prasad Deka ((1970) 3 SCC 624)* this Court said that the date of the compulsory retirement: (SCC pp.625-26, para 4)

"[M]ust in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

In the case of *Govt. of A.P.* v. *M. Hayagreev Sarma ((1990)2 SCC 682)* the A.P. Public Employment (Recording and Alteration of Date of

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Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the Rules framed by the State Government referred to above. It was inter alia observed by this Court: (SCC p. 685, para 7)

" 7 . The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

11. The same position is reiterated in the decision reported in (2005) 6 SCC 49 (State of U.P. v. Shiv Narain Upadhyaya). In the said decision, it was noticed by the Honourable Supreme Court that the concerned person was allowed to work pursuant to the interim order passed by the High Court for about five months and the salary received during the period was directed not to be recovered on the principle of equity.

12. In the case on hand also, the petitioner was allowed to work pursuant to the interim orders passed by this Court from 1.11.1998 to 31.10.2005 and he was relieved from service on 31.10.2005 and the said order passed by the General Manager (Administration) dated 28.10.2005 is extracted hereunder.

"METROPOLITAN TRANSPORT CORPORATION(CHENNAI) LTD,
CHENNAI-2

No.25003/PS(A)4/MTC/2005 Dated: 28-10-2005

MEMORANDUM

Sub: MTC(Chennai)Ltd - Establishment - Administration - Thiru S.Kannan, Selection Grade Conductor, C09402, Thiruvanmiyur Depot, MTC Ltd, Chennai -41 - is permitted to retire from service on attaining the age of superannuation on 31-10-2005 A.N. without prejudice to our right in W.P.No.16511/98 - Orders issued - Reg.

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Thiru S.Kannan, Selection Grade Conductor, C09402, Thiruvanmiyur Depot, MTC Ltd, Chennai-45 is permitted to retire from service on attaining the age of superannuation on the afternoon of 31.10.2005 without prejudice to our right in W.P.No.16511/98 filed by him against MTC Ltd, Chennai-2.

He is relieved off from service on the afternoon of 31-10-2005 and his service Certificate will be issued, after the disposal of the W.P.No.16511/98.

(Sd)M.CHANDRASEKARAN
General Manager (Admn)"

13. Applying the principle of equity as held by the Honourable Supreme Court to the facts in this case and the respondents having utilised the service of the petitioner from 1.11.1998 to 31.10.2005 for which the petitioner was paid salary, the respondents are directed not to recover the salary paid to the petitioner from 1.11.1998 to 31.10.2005. However, the petitioner is not entitled to reckon the said period for calculating retirement benefits.

14. The writ petition is dismissed with the above observations. No costs.

Vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Managing Director, Metro Transport Corporation, Division-I, Chennai - 2.

2. The Joint Managing Director,
Metro Transport Corporation, Division-I, Chennai - 2.

+ one cc to Mr. V.R. Kamalanathan, Advocate sr no. 10509
+ one cc to Mr. D. Hariparanthaman,Advocate sr no 10558

gm(cO)
nm(02.03.07)

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